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Labor

University of the Pacific; McGeorge School of Law

Labor; family care and medical leave

Government Code § 12945.2 (amended).
AB 1460 (Moore); 1993 STAT. Ch. 827
(Effective October 4, 1993)

Prior law prohibited an employer[1] from refusing to grant a request by any employee[2] with more than one year of continuous service with that employer, and who was eligible for other benefits, to take up to a total of four months in a twenty-four month period for an unpaid "family care leave,"[3] in connection with the birth, adoption, or serious illness of the employee's child, or to care for a parent or a spouse who has a serious health care condition.[4]

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1. *See* CAL. GOV'T CODE § 12945.2(c)(2) (amended by Chapter 827) (defining employer as meaning any person who employs 50 or more persons to perform services for a wage or salary, or the state, and any political or civil subdivision of the state and cities); *cf. id.* § 12926(d) (West Supp. 1993) (defining employer, under all other sections of the California Fair Employment and Housing Act, Government Code §§ 12900-12999, as employing at least five employees); *id.* § 12940(h)(3)(A) (West Supp. 1993) (defining employer as any person regularly employing one or more persons, or any person acting as an agent of the employer, directly or indirectly, the state, or any other political or civil subdivision thereof, or cities).

2. *See id.* § 12926(c) (West Supp. 1993) (defining employee as not including any individual employed by that employee's parents, spouse, or child or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility).

3. *See* Cal. Legis. Serv. ch. 427, sec. 49, at 1346 (amending CAL. GOV'T CODE § 12945.2(b)(3)); *cf.* D.C. CODE ANN. § 36-1302 (1993); ME. REV. STAT. ANN. tit. 26, § 844 (West Supp. 1993); N.J. STAT. ANN. § 34:11B (West Supp. 1993); WASH. REV. CODE ANN. § 49.78.030 (West 1990) (providing for parental or family leave for male and female employees); Kelly Co. v. Marquardt, 493 N.W.2d 68, 75 (Wis. 1992) (stating that under the Family Care and Medical Leave Act provisions, employees retain their status, responsibility and authority while they are on leave); Butzlaff v. Wisconsin Personnel Comm'n, 480 N.W.2d 559, 561 (Wis. 1992) (holding that an employee must meet two requirements in order to be entitled to benefits under the Family and Medical Leave Act: (1) Employee must have been employed by the same employer for more than 52 consecutive weeks; and (2) employee must have worked for the employer more than 1,000 hours during the previous 52 week period). *See generally* Maria O'Brien Hylton, *"Parental" Leaves and Poor Women: Paying the Price For Time Off*, 52 U. PITT. L. REV. 475, 478-85 (1991) (critiquing unpaid parental leave and parental leave legislation recently passed by Congress).

4. 1992 Cal. Legis. Serv. ch. 427, sec. 49, at 1346 (amending CAL. GOV'T CODE § 12945.2(a)). *See generally* LINDA HAAS, EQUAL PARENTHOOD AND SOCIAL POLICY; A STUDY OF PARENTAL LEAVE IN SWEDEN (1992) (analyzing the Swedish governmental program promoting participation of mothers and fathers equally in childcare and allowing an aggregate of 12 months leave time between the mother and father to care for the child with return to one's original job being assured); LISE VOGEL, MOTHERS ON THE JOB: MATERNITY POLICY IN THE U.S. WORKPLACE (1993) (discussing the policies and strategies for dealing with maternity leave in the workplace); Gabrielle Lessard, *Conflicting Demands Meet Conflict Of Laws: ERISA Preemption of Wisconsin Family and Medical Leave Act*, 1992 WIS. L. REV. 809 (discussing the provisions of the Wisconsin Family Medical and Leave Act as well as other similar provisions from other state statutes and their interaction with the Federal Employment Retirement Income Security Act of 1974); Rick Holguin, *Untraditional Families Closer To Getting Benefits*, L.A. TIMES, Mar. 4, 1993, at J1 (discussing the possibility for "non-traditional" families,

Chapter 827 authorizes an eligible employee to take "family care and medical leave" because of a serious health condition[5] of the employee that makes the employee unable to perform the functions of his or her position.[6] Chapter 827 also changes the limit on this leave to twelve working weeks in a twelve month period.[7] Chapter 827 additionally makes the family and medical leave provisions applicable to the state and any political or civil subdivision of the state or cities.[8] Chapter 827 further provides that, notwithstanding existing law, it is not an unlawful employment practice for an employer of fifty or more employees to refuse to grant an employee's request for family care and medical leave if the employer employs less than fifty employees within seventy-five miles of the employee's worksite.[9]

Under existing law, an employer may require that a request for leave to care for a child, spouse, or parent who has a serious health condition be supported by a certification issued from a health care provider.[10] Chapter 827 allows the employer to request second and third opinions in regard to the validity of the initial certification with respect to the employees own serious health condition.[11] Chapter 827 further allows an employer, as a condition of the employee's return from leave taken because of the

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including gay and lesbian couples, to receive benefits that city government officials have reserved for traditional families).

5. *See* CAL. GOV'T CODE § 12945.2(c)(7)(A),(B) (amended by Chapter 827) (defining "serious health condition" as meaning an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential health care facility or continuing treatment or continuing supervision by a health care provider).

6. *Id.* § 12945.2(c)(3)(C) (amended by Chapter 827); *see id.* § 12945.2(c)(3) (amended by Chapter 827) (defining family care and medical leave); *see also* ASSEMBLY COMMITTEE ON WAYS AND MEANS, COMMITTEE ANALYSIS OF AB 1460, at 1 (June 2, 1993) (stating that Chapter 827 clarifies and conforms state law to the federal Family and Medical Care Leave Act of 1993). *See generally* Donna R. Lenhoff & Sylvia M. Becker, *Family and Medical Leave Legislation in the States: Toward A Comprehensive Approach*, 26 HARV. J. ON LEGIS. 403 (1989) (discussing recent trends in family leave legislation); Frank Swoboda, *Family Issues Make Slow Progress in Labor Contracts*, WASH. POST, Apr. 5, 1992, at H2 (discussing the incorporation of work-family issues into union contracts); George White, *Fulfilling Family Needs; More Firms Adjust To Workers' Personal Lives*, L.A. TIMES, Nov. 15, 1991, at D1 (discussing the steps taken by major United States companies to ease the burden of working and raising a family at the same time).

7. CAL. GOV'T CODE § 12945.2(a) (amended by Chapter 827); *see id.* § 12945.2(c)(5) (amended by Chapter 827) (defining health care provider); *cf.* CONN. GEN. STAT. § 52-184(b) (1991); FLA. STAT. ch. 440.13(1)(b) (West 1992); GA. CODE. ANN. § 31-7-172(4) (1991); HAW. REV. STAT. § 671-1 (1992); IND. CODE. ANN. § 27-12-2-1 (West Supp. 1993) (defining health care provider). *See generally* George L. Blum, Annotation, *Medical Malpractice: Who Are "Health Care Providers," or the Like, Whose Actions Fall Within Statutes Specifically Governing Actions and Damages For Medical Malpractice*, 12 A.L.R. 5th (1993) (discussing who or what are health care providers).

8. CAL. GOV'T CODE § 12945.2(c)(2)(B) (amended by Chapter 827).

9. *Id.* § 12945.2(b) (amended by Chapter 827).

10. *Id.* § 12945.2(j)-(k) (amended by Chapter 827).

11. *Id.* § 12945.2(k)(2) (amended by Chapter 827).

employee's own serious health condition, to require the employee to obtain certification from the employee's health care provider that the employee is able to resume working.[12]

Existing law provides that an employee taking family care leave may elect, or the employer may require, the employee to substitute vacation leave or other accrued time off, during the period of leave.[13] However, existing law prohibits an employee from using accrued sick leave, unless mutually agreed to by the employer and the employee.[14] Chapter 827 permits an employee to elect, or an employer to require an employee, to substitute accrued sick leave during the period of leave if the leave is taken for the employee's own serious health condition.[15]

Existing law provides that an employee taking family care leave continues to be eligible to participate in health care benefit plans during the period of the leave to the extent and under the same conditions as apply to any unpaid leave taken for any other purpose.[16] It is permissible, in the absence of the aforementioned conditions, to require the employee to pay health and welfare benefit plan premiums at the group rate during the period of leave.[17] Chapter 827 requires an employer, during any period that an employee takes family care and medical leave, to maintain and pay for the employees medical coverage under a group health plan.[18] Chapter 827 further allows an employer to recover the premium that the employer paid for maintaining coverage for the employee under the group health plan under specified conditions.[19]

Prior law allowed an employer to deny a request for family care leave if necessary to prevent undue hardship to the employer's operations.[20] Chapter 827 deletes this provision.[21]

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12. *Id.* § 12945.2(k)(4) (amended by Chapter 827).
13. *Id.* § 12945.2(e) (amended by Chapter 827).
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* § 12945.2(f) (amended by Chapter 827).
19. *Id.* § 12945.2(f)(1) (amended by Chapter 827); *see id.* § 12945.2(f)(1)(A)-(B) (amended by Chapter 827) (stating that an employer may recover the premium that the employer paid for maintaining the coverage for the employee under the group health plan, if both of the following conditions are present: (1) The employee fails to return from leave after the period of leave to which the employee is entitled has expired; and, (2) the employees's failure to return to work is not the result of the continuation recurrence, or onset of a serious health condition that entitles the employee to leave, or other circumstances beyond the control of the employee).
20. 1992 Cal. Legis. Serv. ch. 427, sec. 49, at 1346 (amending CAL. GOV'T CODE § 12945.2).
21. CAL. GOV'T CODE § 12945.2 (amended by Chapter 827).

Prior law allowed an employer to refuse to grant a request for family care leave of a salaried employee who was one of the five highest paid employees or among the top ten percent of employees in terms of gross salary.[22] Chapter 827, in conformity with the Federal Family and Medical Leave Act of 1993,[23] allows an employer to refuse to reinstate in the same or comparable position, a salaried person coming back from family care and medical leave who is among the highest paid ten percent of the employees employed within seventy-five miles of the employee's worksite.[24] Chapter 827 specifies that the aggregate amount of leave taken under either this act or the Federal Family and Medical Leave Act of 1993 must not be in excess of twelve workweeks.[25] Chapter 827 authorizes the Fair Employment and Housing Commission to establish different minimum duration requirements for various types of leave.[26] Additionally, the Commission shall permit leave to be taken in specified increments for recurring medical treatment.[27]

Under prior law, an employer could refuse to grant an employee family care leave to care for a child if the child's other parent was also taking leave at the same time, or if the total cumulative leave for the two parents exceeded the four month limit.[28] Chapter 827 limits the aforementioned provision to cases where both parents are employed by the same employer and the leave is in relation to birth, adoption, or foster care of a child.[29]

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22. 1992 Cal. Legis. Serv. ch. 427, sec. 49, at 1346 (amending CAL. GOV'T CODE § 12945.2(q)).

23. *See* 5 U.S.C.S. §§ 6831-6836 (1993) (establishing the federal rules and regulations for family care and medical leave). *See generally* Dana Canedy, *New Family Leave Act Reassuring To Some, Headache For Others*, PLAIN DEALER, Feb. 7, 1993, at 1E (discussing arguments in support of and opposition to the federal Family and Medical Care Leave Act of 1993); Wayne Hicks, *Family Leave: Why Is Business Rattled*, DENVER BUS. J., March 26, 1993, at 35 (discussing the enactment of the federal Family and Medical Leave legislation and its effects on businesses).

24. CAL. GOV'T CODE § 12945.2(r)(1)(A) (amended by Chapter 827).

25. *Id.* § 12945.2(s) (amended by Chapter 827).

26. 1993 Cal. Legis. Serv. ch. 827. sec. 2, at 40 (amending CAL. GOV'T CODE § 12945.2).

27. *Id.*

28. 1992 Cal. Legis. Serv. ch. 427, sec. 49, at 1346 (amending CAL. GOV'T CODE § 12945.2(o)).

29. CAL. GOV'T CODE § 12945.2(p) (amended by Chapter 827).

Labor; harassment on the basis of sex

Government Code § 12940 (amended).
AB 675 (Moore); 1993 STAT. Ch. 711

Existing law forbids employers[1] from harassing employees[2] or applicants for employment on the basis of their sex.[3] Chapter 711 explicitly defines harassment on the basis of sex to include sexual

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1. *See* CAL. GOV'T CODE § 12940(h)(3)(A) (amended by Chapter 711) (defining employer in harassment claims as any individual who employs at least one other person). *But see id.* § 12926(d) (West Supp. 1993) (defining employer as any individual who employs at least five others for purposes of all remaining subdivisions of the California Fair Employment and Housing Act (FEHA)). *See generally id.* §§ 12900-12995 (West 1992 & Supp. 1993) (setting forth the provisions of FEHA).

2. *See id.* § 12926(c) (West Supp. 1993) (excluding from the definition of employee individuals employed by their parents, spouses, or children, or anyone employed in a non-profit sheltered workshop or rehabilitation facility under a special license).

3. *Id.* § 12940(h) (amended by Chapter 711); *see* 42 U.S.C. § 2000e-2(a)(1) (1988) (classifying as unlawful any employment discrimination on the basis of sex); 29 C.F.R. § 1604.11 (1992) (explaining that sexual harassment qualifies as sex discrimination as defined in Title VII of the Civil Rights Act of 1964); Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 64-67 (1986) (designating sexual harassment, particularly that resulting from a hostile work environment, as a type of discrimination actionable under Title VII, and ruling that tangible loss is not a requirement for such a claim); Janet Selden, *Employer Liability for "Hostile Environment" Sexual Harassment*, Meritor Savings Bank, FSB v. Vinson, 31 HOW. L.J. 51, 52-65 (1990) (tracing the history of employment liability in hostile environment claims and relating it to *Meritor Savings Bank*); Christopher P. Barton, Note, *Between the Boss and a Hard Place: A Consideration of* Meritor Savings Bank, FSB *and the Law of Sexual Harassment*, 67 B.U. L. REV. 445, 457-73 (1987) (discussing the *Meritor Savings Bank* case and offering resolutions to issues left untreated by the Court); Marlisa Vinciguerra, Note, *The Aftermath of* Meritor: *A Search for Standards in the Law of Sexual Harassment*, 98 YALE L.J. 1717, 1720 (1989) (exploring the "often subtle interplay" between hostile work environment and quid pro quo harassment); *see also* Rabidue v. Osceola Refining Co., 805 F.2d 611, 621 (6th Cir. 1986) (requiring reasonable interference with plaintiff's work performance and serious psychological impact on the well-being of the alleged victim before allowing recovery). *But see* Ellison v. Brady, 924 F.2d 872, 876-77 (9th Cir. 1991) (departing from the *Rabidue* rationale in holding that an employee should not endure harassment to a degree which results in serious psychological effect); *id.* (finding a prima facie case of sexual harassment to exist where a plaintiff has faced a hostile environment or has suffered detrimental interference with work performance). *Compare* Amy Horton, Comment, *Of Supervision, Centerfolds, and Censorship: Sexual Harassment, the First Amendment, and the Contours of Title VII*, 46 U. MIAMI L. REV. 403, 453 (1991) (suggesting that expressions violative of Title VII, if protected by the First Amendment, may subordinate the rights of employees to work in a harassment-free environment) *with* Kingsley R. Browne, *Title VII as Censorship: Hostile Environment Harassment and the First Amendment*, 52 OHIO ST. L.J. 481, 550 (1991) (denouncing censorship as the means to obliterate sexist speech). Browne advocates the use of "persuasive response" to offensive views as the superior solution. *Id.*; *cf.* CONN. GEN. STAT. § 46a-60(8) (Supp. 1993) (prohibiting employers from harassing any employee or applicant on the basis of sex). *See generally* TITUS A. AARON, SEXUAL HARASSMENT IN THE WORKPLACE (1993) (discussing *Meritor Savings Bank* in the context of Supreme Court decisions and recent events in Congress).

harassment,[4] gender harassment,[5] and harassment based on pregnancy,[6] childbirth,[7] or related medical conditions.[8]

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Labor; occupational safety and health

Labor Code §§ 6314, 6651, 7314, 7350 (amended).
AB 2016 (Conroy); 1993 STAT. Ch. 998

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4. *See* Department of Fair Employment & Hous. v. Ambylou Enter., Inc., No. 82-06, FEHC Precedential Decisions 1982-83, 6 (1982) (defining sexual harassment as any verbal, physical, or sexual behavior demonstrated toward a person because of gender); CAL. CODE REGS. tit. 2, § 7287.6(b) (1990) (interpreting sexual harassment to include verbal, physical, and visual harassment, or unwanted sexual advances); CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN 1 (1979) (describing sexual harassment as an undesired sexual requirement in a relationship of unequal power); *see also* Hicks v. Gates Rubber Co., 833 F.2d 1406, 1414 (10th Cir. 1987) (delineating two types of sexual harassment: quid pro quo and hostile work environment); Susan M. Faccenda, Note, *The Emerging Law of Sexual Harassment: Relief Available to the Public Employee*, 62 NOTRE DAME L. REV. 677, 677 (1987) (suggesting that types of sexual harassment range from single instances to "continuous sexual tormenting"). *See generally* Aaron, *supra* note 3 (tracing the rise of sexual harassment as a social issue); ALBA CONTE, SEXUAL HARASSMENT IN THE WORKPLACE: LAW AND PRACTICE (1990) (presenting a history of sexual harassment law, outlining the elements of sexual harassment claims, and surveying applicable law on both the federal and state levels); BARBARA LINDERMANN & DAVID KADUE, SEXUAL HARASSMENT IN EMPLOYMENT LAW (1992) (defining forms of harassment and exploring the corresponding theories of liability); WILLIAM PETROCELLI & BARBARA KATE REPA, SEXUAL HARASSMENT ON THE JOB (1992) (addressing the background, causes, and effects of sexual harassment, along with the view taken towards it by the legal profession).

5. *See* Joshua F. Thorpe, Note, *Gender-Based Harassment and the Hostile Work Environment*, 1990 DUKE L.J. 1361, 1362 (1990) (defining gender harassment as unequal treatment based solely on a person's maleness or femaleness). Thorpe distinguishes between sexual harassment and gender harassment by observing that undue criticism, epithets, rude remarks, and insults may not be backed by sexual motivation, "but may nonetheless flow from a gender-based animus." *Id.* at 1363; *see also* Hall v. Gus Constr. Co., Inc., 842 F.2d 1010, 1014 (8th Cir. 1988) (finding that intimidation towards women solely "because they are women" is not necessarily limited to explicit sexual advances or similar conduct). *See generally* Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 800 (1989) (differentiating between men and women not only because of biological "sex," but also because of social "gender").

6. *See* STEDMAN'S MEDICAL DICTIONARY 1251 (25th ed. 1990) (defining pregnancy).

7. *See id.* at 288 (25th ed. 1990) (defining childbirth).

8. CAL. GOV'T CODE § 12940(h)(3)(C) (amended by Chapter 711); *see* ASSEMBLY FLOOR ANALYSIS OF AB 675, at 1-2 (Sept. 1, 1993) (noting that the intent of Chapter 711 is to counter any real or feigned ignorance by employers that discrimination on the basis of sex is limited to sexual harassment); *see also* Department of Fair Employment & Hous. v. Fresno Hilton Hotel, No. 84-03, FEHC Precedential Decisions 1984-85, 28 n.7 (1984) (explaining that harassment may include almost any type of conduct, extending not only to physical behavior, but also to blocking of movement, interference, verbal statements, epithets, derogatory remarks, visual displays, offensive writings, pictures, or photographs); *cf.* 42 U.S.C. § 2000e(k) (1988) (extending the phrase "on the basis of sex" to include pregnancy, childbirth, or related medical conditions).

Under existing law, the Division of Occupational Safety and Health (Division)[1] is authorized to investigate any accident or illness that occurs within an industrial or occupational workplace.[2] Additionally, existing law permits the chief of the Division, or any other authorized Division inspectors, to investigate a place of employment[3] during regular working hours, or any reasonable times, in order to protect the safety and health of employees.[4]

Prior law provided that if the chief or the chief's authorized representative was refused entry by the employer, the chief or the representative could issue an order to preserve any materials or accident sites in order to determine the cause of the accident or illness.[5] Chapter 998 allows the chief to issue an order to preserve any materials or accident sites regardless of whether entry was refused, if such action is necessary to determine the cause of the accident or illness, and if the evidence may be removed, damaged, or altered.[6]

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1. *See* CAL. LAB. CODE § 56 (West 1989) (creating the Division of Occupational Safety and Health within the Department of Industrial Relations).

2. *Id.* § 6313(a)-(b) (West 1989); *see id.* §6300 (West 1989) (enacting the California Occupational Safety and Health Act of 1973 and setting forth its purpose); *cf.* 29 U.S.C. § 657(a) (1988) (authorizing the investigation and inspection of places of employment under the Federal Occupational Safety and Health Act). *See generally* CAL. CODE REGS. tit. 8, § 342(a) (1990) (requiring employers to report any occupational accident, illness, or death to the Division); *id.* § 344.50 (requiring the Division to investigate and inspect places of employment and to impose civil penalties if necessary); *id.* § 344.51 (stating that the function of the Bureau of Investigations, within the Division, is to conduct criminal investigation of occupational accidents).

3. *See* CAL. LAB. CODE § 6303(a) (West 1989) (defining place of employment as any place where employment is carried on); *id.* §6303(b) (West 1989) (defining employment as any operation in which any person is working for hire, except for household domestic service).

4. *Id.* § 6314(a) (West 1989); *see also id.* § 6300 (West 1989) (requiring employers to provide for safe and healthful working conditions); *cf.* 29 U.S.C. § 651 (1993) (setting forth the purpose and policy behind the Occupational Safety and Health Act of 1970); ALASKA STAT. § 18.60.010 (1991) (discussing the legislative intent behind requiring employers to provide for safe places of employment); DEL. CODE ANN. tit. 19, § 106(a) (1985) (authorizing the Department of Labor to make rules for the prevention of accidents in places of employment); IND. CODE ANN. § 22-8-1.1-2 (West 1991); KY. REV. STAT. ANN. § 338.031 (1)(a) (Baldwin 1988) (creating a duty for employers to establish and maintain safe and healthful places of employment); MISS. CODE ANN. § 71-1-1 (1989) (empowering the State Board of Health to establish an occupational health and safety program).

5. 1984 Cal. Stat. ch. 1317, sec. 4, at 4521 (amending CAL. LAB. CODE § 6314).

6. CAL. LAB. CODE § 6314(e) (amended by Chapter 998). *See generally* Marshall v. Barlow's, Inc., 436 U.S. 307, 311 (1978) (stating that certain areas in commercial facilities are entitled to Fourth Amendment protection); Parrish v. Civil Serv. Comm'n, 66 Cal. 2d 260, 267, 425 P.2d 223, 228, 57 Cal. Rptr. 623, 628 (1967) (concluding that criminal probable cause standards should have been used to test the legality of searches by social workers into homes of guardians of children on welfare); Salwasser Mfg. Co., Inc. v. Municipal Court, 94 Cal. App. 3d 223, 231, 156 Cal. Rptr. 292, 297 (1979) (stating that the legality of inspections conducted by the Division of Occupational Safety and Health are to be measured by criminal probable cause standards); ; Anthony T. Caso, *Nonconsensual Cal/OSHA Inspections After* Salwasser: *They're Still Illegal*, 14 PAC. L.J. 913 (1983) (analyzing the impact of *Salwasser* on administrative search regulations in California); David Douglas Doyle, Comment, *Criminal Probable Cause in Administrative Searches Under California OSHA: Mandated or Preempted?*, 11 PAC. L.J. 1019 (1980) (discussing the relation between administrative searches and criminal

Under prior law an action to collect any civil penalty relating to safety in employment had to commence no later than three years from the date of notification of the penalty.[7] Chapter 998 changes the time of commencement, so that an action to collect a penalty or fee must commence no later than three years from the date of a final assessment of the penalty.[8]

APL

Labor; occupational safety and health—asbestos

Labor Code §§ 9021.7, 9021.9 (new); §§ 6501.8, 9021.6 (amended).
SB 877 (Marks); 1993 STAT. Ch. 1075

probable cause under California law); Judy E. Zelin, Annotation, *Propriety of State or Local Government Health Officer's Warrantless Search—Post* Camara *Cases*, 53 A.L.R. 4th 1168 (1987 & Supp. 1993) (discussing the inspection and investigation of places of employment by health officials under the Federal Occupational Safety and Health Act or similar state provisions).

7. 1991 Cal. Legis. Serv. ch. 1210, sec. 3, at 5102 (enacting CAL. LAB. CODE § 6651).

8. CAL. LAB. CODE § 6651(a) (amended by Chapter 998); *see id.* § 6651(b) (amended by Chapter 998) (noting that subdivision (a) only applies to penalty assessments or fees for which the three year period has not expired prior to the effective date of Chapter 998).

Under existing law, contractors[1] who engage in asbestos-related work[2] of any significance[3] must pass an asbestos certification exam administered by the Contractors' State License Board (CSLB).[4] Existing law exempts from this asbestos certification exam requirement those contractors whose asbestos-related work involves the installation, maintenance, and repair of

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1. *See* CAL. BUS. & PROF. CODE § 7026 (West Supp. 1993) (defining contractor broadly to include most "builder" type activities involving roads, grounds, or structures); *id.* § 7026.1 (West Supp. 1993) (expanding the definition of contractor to include fixed heating and air conditioning unit servicers, home improvers, tree removers, and well drillers); *id.* § 7026.2(a) (West Supp. 1993) (expanding the definition of contractor to include builders, repairers, and movers of mobilehomes or mobilehome accessory buildings); Hydrotech Systems v. Oasis Waterpark, 52 Cal. 3d 988, 995, 803 P.2d 370, 374, 277 Cal. Rptr. 517, 521 (1991) (stating that foreign contractors, and persons involved in isolated transactions or unique building services may be deemed contractors for licensing purposes); Lewis & Queen v. N.M. Ball Sons, 48 Cal. 2d 141, 147, 308 P.2d 713, 717 (1957) (determining that a furnisher of equipment for a highway construction project was a contractor for licensing purposes); Leonard v. Hermreck, 168 Cal. App. 2d 142, 144-45, 335 P.2d 515, 516-17 (1959) (holding that a party who hauled and dumped dirt on a roadbed during construction was a contractor for licensing purposes); Howard v. State, 85 Cal. App. 2d 361, 364, 193 P.2d 11, 13 (1948) (holding that repair, alteration, and improvement of a building may involve painting, and that painters are contractors for licensing purposes). *But see* Contractors Dump Truck Serv. v. Gregg Constr. Co., 237 Cal. App. 2d 1, 7, 46 Cal. Rptr. 738, 742-43 (1965) (holding that a furnisher of labor and equipment was a contractor for lien purposes, but noting the same person might not be a contractor for licensing purposes if that person's activity was limited to renting tractors and other earthmoving equipment, and hiring out the drivers, and the person had no supervisory responsibility for the job); Rodoni v. Harbor Eng'rs, 191 Cal. App. 2d 560, 562-63, 12 Cal. Rptr. 924, 926 (1961) (holding that a person whose activity was limited to renting tractors and earthmoving equipment, as well as hiring out the drivers, was an employee of a general contractor and not a subcontractor).

2. See CAL. LAB. CODE § 6501.8(a) (West 1989) (defining asbestos-related work as any activity which by disturbing asbestos-containing construction materials may release asbestos fibers into the air, but excluding activities involving mining, excavation, or manufacture of asbestos ore or materials, or installation or repair of automotive materials containing asbestos); *id.* § 6501.8(b) (West 1989) (defining asbestos-containing construction materials as those with more than one tenth of one percent asbestos by weight); CAL. BUS. & PROF. CODE § 7058.5(a) (West Supp. 1993) (adopting the definition of asbestos-related work provided in California Labor Code § 6501.8). *See generally* Environmental Encapsulating Corp. v. City of New York, 855 F.2d 48, 50 (2nd Cir. 1988) (noting that more than half the commercial high-rises built in New York City between 1958 and 1972 incorporate asbestos-containing materials, an estimated 3.5 million tons citywide); Mullen v. Armstrong World Industries, Inc., 200 Cal. App. 3d 250, 258, 246 Cal. Rptr. 32, 37 (1988) (stating that asbestos is used in flooring, gaskets, packing, paints, coatings, sealants, plastics, cement pipes and sheets, electrical conduit, insulation, pads, mats, filters, decorative building panels, plaster, stucco, asphalt, caulk, fire doors, siding, shingles, wallboards, acoustical ceiling materials, and switches).

3. *See* CAL. LAB. CODE § 6501.5 (West 1989) (establishing a statutory application threshold of at least 100 square feet of surface area of asbestos-containing material); CAL. BUS. & PROF. CODE § 7058.5(a) (West Supp. 1993) (adopting the 100 square feet of surface area threshold); *cf.* MICH. COMP. LAWS ANN. § 338.3207(2) (West 1992) (establishing a statutory application threshold, valid through June 1, 1993, of at least 160 square feet or 260 linear feet of friable asbestos materials).

4. CAL. BUS. & PROF. CODE § 7058.5(a) (West 1993); *see id.* (establishing the asbestos examination and certification requirement); *cf.* CONN. GEN. STAT. ANN. § 20-435 (West Supp. 1993) (requiring that asbestos contractors be licensed); MICH. COMP. LAWS ANN. § 338.3207 (West 1992) (requiring that asbestos abatement contractors be licensed); MO. ANN. STAT. § 643.232.1(1)-(2) (Vernon Supp. 1993) (requiring that asbestos abatement contractors register annually); WASH. REV. CODE ANN. § 49.26.115 (West 1993) (requiring that contractors obtain an asbestos contractor's certificate).

asbestos cement pipe or sheets, vinyl asbestos floor materials, or asbestos bituminous or resinous materials.[5]

Under existing law, asbestos is recognized as unhealthful[6] and contractors who engage in asbestos-related work must register with the Division of Occupational Safety and Health (DOSH).[7] Chapter 1075

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5. CAL. BUS. & PROF. CODE § 7058.5(a) (West Supp. 1993); *cf.* HAW. REV. STAT. § 444-7.5(a) (Supp. 1992) (exempting otherwise licensed contractors from further licensing as specialty contractors for activities such as maintenance, repair, or removal of asbestos pipe or sheets, vinyl asbestos floor materials or asbestos-bituminous or resinous materials, as well as for other activities deemed incidental to the primary purpose for which the contractors holds a license, where such activities are performed safely).

6. *See* CAL. LAB. CODE § 6501.5(f) (West 1989) (requiring that the California Division of Occupational Safety and Health regulate asbestos-related work to protect the health and safety of employees); CAL. CODE REGS. tit. 8, § 1529 (1992) (regulating asbestos-related construction activities to protect worker health and safety); *id.* § 5208 (1992) (regulating asbestos-related industrial activities to protect worker health and safety); Henning v. Division of Occupational Safety and Health, 219 Cal. App. 3d 747, 762, 268 Cal. Rptr. 476, 485 (1988) (noting that regulation of contractors engaging in asbestos-related work of the kind governed by statute is designed to foster the safety and health of employees and others who may be adversely affected); *see also* 29 C.F.R. §§ 1910.1001, 1926.58 (1992) (establishing federal rules and standards for asbestos-related industrial and construction activities to protect worker health and safety); Associated Indus. of Mass. v. Snow, 898 F.2d 274, 276 (1st Cir. 1990) (noting that asbestos is dangerous, that it poses a significant public health threat, and that its tiny indestructible fibers can crumble into powder and become airborne, travelling in open air or through a building's ventilation system); *id.* at 280 (noting that each sweep of a broom by a worker not trained to recognize asbestos and dispose of it properly, poses a threat to the health of the public); Environmental Encapsulating Corp. v. City of New York, 855 F.2d 48, 50 (2d Cir. 1988) (identifying asbestos as a formidable public health threat and the cause of asbestosis, lung cancer, gastrointestinal cancer, and mesothelioma). *See generally* Ira Pilchen, *Asbestos, 'The Magical Mineral,' Creates Toxic Tort 'Avalanche,'* 75 JUDICATURE 320 (Apr./May 1992) (reporting that as early as the first century, slaves working with asbestos used transparent bladder skins to prevent inhalation of the deadly dust).

7. CAL. LAB. CODE § 6501.5(a) (West 1989); *see id.* § 6501.5 (West 1989) (requiring for registration that an applicant contractor attest under penalty of perjury that he or she is certified pursuant to California Business and Professions Code § 7058.5, has health insurance or trust accounts for each employee engaged in asbestos-related work, has trained all employees, and is both proficient and properly equipped); CAL. CODE REGS. tit. 8, § 341.6 (1992) (providing general registration requirements and definitions); *id.* § 341.7(4) (providing specific registration requirements, including a declaration under penalty of perjury that the employer knows applicable safety and health standards and will comply); *see also* 29 U.S.C. § 651(b)(3) (1988) (authorizing the Secretary of Labor to set mandatory occupational safety and heath standards for businesses affecting interstate commerce); *id.* § 667(b) (1988) (encouraging states to assume responsibility for development and enforcement of occupational safety and health standards by submitting a plan which assures the Secretary of Labor that state standards will meet or exceed federal guidelines); 29 C.F.R. §§ 1910.1001, 1926.58 (1992) (establishing federal rules and standards for asbestos-related industrial and construction activities to protect worker health and safety); CAL. LAB. CODE § 50.7(a) (West 1989) (designating the Department of Industrial Relations as the state agency responsible for administering the plan for development and enforcement of occupational safety and health standards which correspond to federal standards promulgated under 29 U.S.C. § 651-678 (1988 & Supp. II 1990); CAL. CODE REGS. tit. 8, §§ 1529, 5208 (1992) (providing corresponding state rules and standards in the form of safety orders for asbestos-related construction and industrial work); North Valley Baptist Church v. McMahon, 696 F. Supp. 518, 528 (E.D. Cal. 1988) (noting that registration is an imprecise term which defines a variety of divergent types of regulation; that the common distinguishing element is the relative laxity of state oversight; that registration generally requires the regulated entity to file a statement which shows compliance with all governing standards or criteria; that thereafter the entity bears a continuing responsibility to comply; and that usually the state will have no further involvement until and unless a complaint is lodged).

exempts from this DOSH registration requirement those contractors whose asbestos-related work involves the installation, maintenance, repair, or nondestructive removal of asbestos cement pipe used outside of buildings, if the work is accomplished safely,[8] and if supervisors and employees have received task-specific training.[9]

Under Chapter 1075, the Occupational Safety and Health Standards Board must specify requirements for task-specific training programs, and approve qualified training providers.[10] Chapter 1075 also authorizes DOSH to charge qualified asbestos training providers a fee to cover administrative costs of the approval process.[11]

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8. *See* CAL. LAB. CODE § 6501.8(c) (enacted by Chapter 1075) (adopting asbestos exposure action levels determined in accordance with California Code of Regulations title 8, §§ 1529 and 5208); CAL. CODE REGS. tit. 8, § 1529 (1992) (providing instructions in the form of a safety order for asbestos-related construction work); *id.* § 5208 (providing instructions in the form of a safety order for asbestos-related industrial work); *cf.* Independent Sch. Dist. v. W.R. Grace & Co., 752 F. Supp. 286, 305 (D. Minn. 1990) (holding that a school district has a cause of action in tort for asbestos-related damages, and noting that there is no indication that compliance with both federal safety regulations and state tort standards is impossible); J'aire Corp. v. Gregory, 24 Cal. 3d 799, 805, 598 P.2d 60, 64, 157 Cal. Rptr. 407, 411 (1979) (stating the well-settled law that a contractor has a duty to avoid injury to the person or property of third parties); Chance v. Lawry's Inc., 58 Cal. 2d 368, 378, 374 P.2d 185, 190, 24 Cal. Rptr. 209, 214 (1962) (holding that an independent contractor who by his own negligence creates dangerous conditions during the progress of the work, is liable for harm caused thereby, and that a contractor's duty of care is a general duty to use reasonable care to prevent damage to persons who may reasonably be expected to be affected); Holt v. Department of Food and Agric., 171 Cal. App. 3d 427, 435-36, 218 Cal. Rptr. 1, 6 (1985) (holding that when human life is at stake the rule of due care and diligence as it applies to employees requires that, without regard to difficulties or expense, every reasonable precaution must be taken to assure the safety of persons in the area); *id.* (stating that the standard of care when dealing with dangerous articles is so great that a slight deviation therefrom will constitute negligence).

9. CAL. LAB. CODE § 6501.8(c) (enacted by Chapter 1075); *see Henning*, 219 Cal. App. 3d at 763, 268 Cal. Rptr. at 485 (1988) (eliminating a DOSH emergency regulation that exempted from DOSH registration contractors whose asbestos-related work involved installation, maintenance and repair of asbestos cement pipe, and who were thereby already exempt from the CSLB asbestos certification exam); *id.* at 760, 268 Cal. Rptr. at 483 (recognizing that DOSH attempted to harmonize the asbestos certification exam requirements of California Business and Professions Code § 7058.5 with the asbestos registration requirements of California Labor Code § 6501.5, by importing an exception from the former into the latter); *id.* at 762, 268 Cal. Rptr. at 485 (holding that CSLB certification is not the equivalent of DOSH registration, and that exemption from one does not imply an exclusion from the other); *id.* (holding that the regulation granting the exemption was contrary to the clear statutory intent of protecting the health and safety of workers); *id.* (stating that in view of the different functions of DOSH and CSLB, harmony between DOSH asbestos registration and CSLB asbestos certification requirements was not necessary); *see also* ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF AB 3202, at 2 (Apr. 8, 1992) (stating that AB 3202, a 1992 bill virtually identical to SB 877, sought to overturn the decision in *Henning*); *id.* (noting that the decision in *Henning* vacated DOSH emergency regulations which made contractors who were already exempt from the CSLB asbestos certification exam also exempt from DOSH registration requirements).

10. CAL. LAB. CODE § 6501.8(c) (enacted by Chapter 1075); *see id.* (mandating the development of task-specific training requirements, to include certain topics and information defined by statute, as well as approval of providers).

11. *Id.* §§ 9021.7, 9021.9(c) (enacted by Chapter 1075).

Labor; overtime—compensating time off

Labor Code § 204.3 (new).
AB 2092 (Takasugi); 1993 STAT. Ch. 544

Under the existing federal Fair Labor Standards Act (FLSA) of 1938,[1] no employer[2] may employ[3] any employee,[4] except as specified,[5] for a workweek[6] longer than forty hours, unless the employee receives compensation for the excess hours at a rate not less than one and one-half times the employee's regular rate[7] of compensation.[8] In addition, only

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1. *See* 29 U.S.C. § 201 (1988) (establishing 29 U.S.C. §§ 201-219, as the Fair Labor Standards Act (FLSA) of 1938).

2. *See id.* § 203(d) (1988) (defining employer).

3. *See id.* § 203(g) (1988) (defining employ); *see also* Secretary of Labor, U.S. Dept. of Labor v. E. R. Field, Inc., 495 F.2d 749, 751 (1st Cir. 1974) (stating that, under the FLSA, an employee's activity is "employment" if it is done at least in part for the benefit of the employer, even though it may also be beneficial to the employee).

4. *See* 29 U.S.C. § 203(e)(1)-(4) (1988) (defining employee).

5. *See id.* § 213(a)(1)-(15) (1988 & Supp. II 1990) (exempting certain employees and industries, such as executives and professionals, outside salesmen, clothing laundries or cleaners, amusement parks, agriculture, newspaper publishing, babysitting, seamen on non-American vessels, motion picture theaters, and the canning or marketing of fish or shellfish, among others, from the regulations concerning the maximum hours that may be worked in a week); Brennan v. Six Flags Over Georgia, 474 F.2d 18, 19 (5th Cir. 1973) (holding that it is the character of the work, not the source of payment, that controls in determining the applicability of exemptions provided for in the FLSA); *id.* (stating that the exemption is not a subsidy for the employer); Roney v. United States, 790 F. Supp. 23, 27 (D.D.C. 1992) (stating that the test of whether an employee is within the administrative exemption under the FLSA, so as not to be entitled to overtime compensation, is whether the employee's activities are directly related to management policies or general business operations); *see also* Donovan v. Carls Drug Co., Inc., 703 F.2d 650, 652 (2d Cir. 1983) (holding that pharmacists paid an hourly rate and not a salary were not professional employees exempt from FLSA provisions); Donovan v. Burger King Corp., 672 F.2d 221, 227 (1st Cir. 1982) (holding that assistant managers of fast food restaurants, who earned at least $250 per week, had management responsibilities as their primary duty under the FLSA and, thus, were exempt from the overtime requirements of the FLSA).

6. *See* 29 C.F.R. § 778.102 (1992) (clarifying that the FLSA does not limit the hours an employee may work in a workweek, but only requires that the employee be paid overtime compensation for those hours in excess of 40, and stating that the FLSA does not require an employee be paid overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays, or regular days of rest); *id.* § 778.105 (1992) (specifying that an employee's workweek is a fixed and regularly recurring period of 168 hours, consisting of seven 24-hour periods, and need not coincide with the calendar week, but may begin on any day and at any time); *see also* Sanford v. Weinberger, 752 F.2d 636, 638-39 (Fed. Cir. 1985) (stating that the calendar week, rather than each period of seven consecutive days of work scheduled, could properly be considered the administrative workweek for purposes of calculating overtime pay, and stating that it is a matter of the agency's discretion to determine which seven consecutive calendar days constitute the administrative workweek).

7. *See* 29 U.S.C. § 207(e) (1988) (defining the regular rate at which an employee is employed to include remuneration for employment paid to, or on behalf of, the employee).

8. 29 U.S.C. § 207(a)(1) (1988); *see* Boehm v. Kansas City Power & Light Co., 868 F.2d 1182, 1183-85 (10th Cir. 1989) (holding that "power company linemen were not entitled to overtime compensation for time they spent 'on call,'" since "the linemen were free to leave the employer's premises, and did so, and were free to use their off-duty time as they wished, provided that they could be contacted and were willing to report to

employees of a public agency which is a state, political subdivision of a state, or interstate governmental agency,[9] may receive compensating time off[10] at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required, in lieu of overtime compensation.[11] Chapter 544 provides that, subject to specified conditions,[12] any employee may receive compensating time off[13] in lieu

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work one-third of the time that they were called"); Mullins v. Howard County, Md., 730 F. Supp. 667, 671 (D.Md. 1990) (stating that overtime pay earned by an employee during a properly selected work period "must be paid in the next paycheck after overtime is worked, unless its computation cannot be practicably accomplished by then"); Renfro v. City of Emporia, 729 F. Supp. 747, 751 (D. Kan. 1990) (holding that "municipal fire fighters' on-call time was compensable under the FLSA"); *id.* (stating that, although the fire fighters were not required to remain on station house premises, conditions of on-call status were so circumscribed that they restricted the employee from effectively using the time for personal pursuits, and finding that the primary beneficiary of the on-call scheme was the city).

9. *See* 29 C.F.R. § 553.20 (1992) (indicating that a public agency which is a state, political subdivision of a state, or interstate governmental agency is defined broadly to include state and local agencies).

10. *See* 29 U.S.C. § 207(o)(6)(B) (1988) (defining "compensating time off" as hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for the purpose of overtime compensation, and for which the employee is compensated at the employee's regular rate).

11. *Id.* § 207(o)(1) (1988); *see id.* § 207(o)(6)(A) (1988) (defining overtime compensation as that compensation required by 29 U.S.C. § 207(a)); Moreau v. Klevenhagen, 113 S. Ct. 1905, 1912 (1993) (holding that, since Texas law prohibited a county from entering a collective bargaining agreement with the deputy sheriffs' union, the county was not required to enter into an agreement with the union before it could pay deputies compensatory time in lieu of cash for overtime work pursuant to the FLSA); Abbott v. City of Virginia Beach, 689 F. Supp. 600, 604 (E.D. Va. 1988) (stating that the provision of the FLSA governing overtime compensation, requiring a public agency to provide compensatory time pursuant to the applicable provisions of a collective bargaining agreement or any other agreement between the public agency and representatives of such employees, applies only where state law permits employees of state and local governmental entities to have recognized representatives); *cf.* ALA. CODE § 36-21-4 (1991); ARIZ. REV. STAT. ANN. §§ 23-391 to 392 (Supp. 1993); CAL. EDUC. CODE §§ 45128, 88027 (West 1989 & 1993); CONN. GEN. STAT. § 7-460c (Supp. 1993); IDAHO CODE § 67-5329 (1989); LA. REV. STAT. ANN. § 33:2213.1 (West 1988); NEV. REV. STAT. § 281.100 (1991); OHIO REV. CODE ANN. § 124.18 (Anderson 1990); OKLA. STAT. tit. 74, § 840.16d (Supp. 1993); S.C. CODE ANN. § 8-11-55 (Law Co-op Supp. 1992); WASH. REV. CODE § 72.01.042 (1982) (authorizing state and local governmental agencies to compensate their public employees with compensatory time off in lieu of overtime compensation). *But see* State of Nevada Employees' Ass'n v. Bryan, 916 F.2d 1384, 1390 (9th Cir. 1990) (holding that the state employees' association was the lawfully recognized representative of the state employees, even though state law prohibited recognition of any collective bargaining unit to represent state employees, since the legislature had recognized the association as the representative of the employees in another context, the state was now required to reach an agreement with the state employees' association before enacting a compensatory time-off policy in lieu of overtime compensation).

12. *See* CAL. LAB. CODE § 204.3(b)(1)-(4) (enacted by Chapter 544) (specifying that an employer may provide compensating time off if: (1) The compensating time off is provided under a written agreement between the employer and the employee, or the employee's duly authorized representative; (2) the employee has not received compensating time off in excess of 240 hours; (3) the employee has made a written request for compensating time off in lieu of overtime compensation; and (4) the employee is regularly scheduled to work no less than 40 hours per workweek).

13. *See id.* § 204.3(g) (enacted by Chapter 544) (defining "compensating time off" the same as federal law); *supra* note 10.

of overtime compensation.[14] Chapter 544 specifies that an employee may receive up to 240 hours of compensating time off, and requires the payment of overtime compensation for hours worked in excess of that maximum.[15] Chapter 544 does not apply to any employee who is exempt from the overtime provisions of the California wage orders or who falls under specified wage orders affecting certain industries.[16]

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14. *Id.* § 204.3(a) (enacted by Chapter 544); *see id.* (specifying that the compensating time off rate will be no less than one and one-half hours for each hour of employment for which overtime compensation is required by law).

15. *Id.* § 204.3(c)(1) (enacted by Chapter 544).

16. CAL. LAB. CODE § 204.3(h)-(i) (enacted by Chapter 544); *see* 29 U.S.C. § 207(a)(1) (1988) (specifying that the only overtime compensation allowed for employees covered by the FLSA is compensation at one and one-half times their regular rate of pay, thus not providing for compensatory time off in lieu of overtime compensation); CAL. LAB. CODE § 204.3(i) (enacted by Chapter 544) (providing that compensatory time off shall not apply to any employee who is subject to wage orders of the Industrial Welfare Commission (IWC) affecting the following industries: (1) The manufacturing industry; (2) the canning, freezing, and preserving industry; (3) public housekeeping; (4) industries handling products after harvest; (5) the amusement and recreation industry; (6) industries preparing agricultural products for market; and (7) agriculture); *id.* § 1173 (West 1989) (authorizing the IWC to amend, rescind, or adopt a portion or an entire wage order covering any occupation, trade, or industry); CAL. CODE REGS. tit. 8, §§ 11010-11150 (1993) (specifying the regulations established by the IWC wage orders that provide minimum standards in wages, hours, and working conditions for 15 industry or occupational groups for California workers in the private sector); *id.* §§ 11010(1), 11020(1), 11030(1), 11040(1), 11050(1), 11060(1), 11070(1), 11080(1), 11090(1), 11100(1), 11110(1), 11120(1), 11130(1), 11140(1), 11150(1) (1993) (exempting administrative, executive, and professional employees, among others, from regulation under the IWC orders governing wages, hours, and working conditions for California workers in the private sector); *see also* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2092, at 2-3 (August 19, 1993) (stating that AB 2092 applies only to a very narrow group of workers because of the large number of industries and workers exempted under the bill and the fact that the federal FLSA, which applies to all employers with workers who are actually engaged in interstate commerce or who have gross annual sales of $500,000 or more, does not recognize compensatory time off for private sector workers). *See generally* Julia Lawlor, *Rat Race Redux/Workers Want to Get a Life*, USA TODAY, Sept. 3, 1993, at 1B (noting that the average workweek for manufacturing employees is now the highest it has been since 1966, at 41.4 hours, since employers are working people longer hours to avoid hiring more staff and paying the high cost of health and pension benefits); Wesley E. Overson, *It's Time to Restructure Overtime*, THE RECORDER, Jan. 27, 1993, at 6 (noting that the FLSA does not allow compensating time off in place of paying overtime pay, even though allowing it "would provide the unemployed more job opportunities, grant employees needed flexibility, and provide employees with needed time for their families or time to seek out further training"); Diane Patrick, *Professional Status or Payment for Overtime: How Should Legal Assistants Be Compensated?*, THE RECORDER, Oct. 26, 1992, at 7 (discussing that a recent survey suggests that almost half of all employers of legal assistants either misunderstand or ignore the FLSA regulations as they pertain to legal assistants and assume they do not have to pay overtime to salaried employees or that compensating time is equivalent to, or an acceptable substitute for, the payment of overtime wages); Carla Rivera, *Fight Over Pay Cuts Escalating*, L.A. TIMES, Aug. 10, 1993, at B1 (discussing that as an alternative to a pay cut, the union for the government employees of Los Angeles County has proposed giving up overtime pay this year, at a savings of $90 million, and would either convert the overtime into compensatory time off or not receive the overtime payment until July 1, 1994).